

**ORISSA HIGH COURT
CUTTACK**

GOVERNMENT APPEAL NO. 5 OF 1990

From the judgment dated 25.08.1989 passed by Sri P.K. De, Ist Addl. Sessions Judge, Puri, in Sessions Trial Case No.10/134 of 1983 of 1988/87.

State of Orissa		Appellant
	Versus	
Baban Jena		Respondent

For Appellant - Mr. Suraj Mohanty,
Addl. Standing Counsel

For Respondent - M/s S.K. Padhi and
P.K.Mishra

PRESENT:-

**THE HON'BLE MR. JUSTICE P.K. TRIPATHY
AND
THE HON'BLE MR. JUSTICE PRADIP MOHANTY**

Date of hearing and judgment : 27.10.2006

This Government Appeal has been preferred against the order of acquittal of one of the thirteen accused persons, who jointly faced trial before the First Additional Sessions Judge, Puri in Sessions Trial Case No.10/134 of 1988/87.

2. Heard learned Additional Standing Counsel. Perused the impugned judgment. It reveals therefrom that on a trivial matter a quarrel ensued between the wife of the informant and the accused persons. The informant is P.W.1 and his wife is P.W.3. In an

unwanted move, when the accused persons challenged P.Ws.1 and 3 at 10 a.m. of 27.07.1984, Indramani the deceased intervened and cautioned the accused persons not to misbehave the lady or to face the consequence thereof. It is alleged by the prosecution that the accused persons reprimanded the intervention of the deceased and mercilessly assaulted him. After sustaining injuries when the deceased fell down, as alleged by the prosecution, the accused-respondent stated that survival of Indramani would be dangerous to them and so saying he dealt a stab blow on the vertex of the deceased by means of a bhali (a sharp pointed weapon). On examination of the oral and documentary evidence of the doctor (P.W.8) and the oral evidence of the eye witnesses, trial court recorded finding that the benefit of doubt should be extended to the accused persons. Thus, it acquitted them of various charges under sections 302/34 IPC, 323/325 IPC, 324 IPC. The present respondent, who was charged under section 302 IPC, was also acquitted on the selfsame ground. Learned Additional Sessions Judge has taken note of the discrepancies in the prosecution evidence to grant the benefit of doubt in favour of the accused persons.

3. Learned Additional Standing Counsel argues that when the eye witnesses are specific that it is the respondent who inflicted the head injury by means of a 'Bhali' and it is the evidence of P.W.8 that such injury on the vital part of the body caused death of the deceased, learned Additional Sessions Judge should not have entertained doubt on such clear evident to grant benefit of doubt in favour of the respondent. Learned counsel for the respondent, on the other hand, argues that approach of the trial court was pragmatic to the evidence on record and there is no fault in the findings recorded by the trial court and accordingly the appeal does not bear any merit.

4. On reference to the evidence of P.W.8, who conducted the postmortem examination on the dead body of the deceased, it is seen that he has stated that injury no.i was "one incised looking lacerated wound 2" x ½" x ¼" on the vault of the scalp." He further

stated that injury no.iii was “communated fracture on the frontal and parietal extending 2 ½” from the left frontal bone up to the parietal bone covering both the tables of the skull. The entire skull bone was fractured.” Injury no.iv was “one globular swelling on both sides of mastoyed region. On cut section there was haematoma under the skin (accumulation of blood). This is probable due to prickling of the blood from the injuries of the scalp.” P.W.8 further stated that “injury no.i might have been caused by some blunt substance i.e. the weapon is neither completely sharp nor completely blunt.. . . . The fracture on the skull might have been caused by forcible impact instrument over vault.”

5. P.W.2 is the doctor who first attended to the deceased in the Algam Primary Health Centre. According to him, there was incised wound looking lacerated injury over the vault of the head, 2” x ½” x more than ½” and there was fracture of the skull bone corresponding to injury no.i. According to him, injury no.i over the vault was caused by sharp cutting weapon whereas injury no.iv was caused by the sharp penetrating weapon. There is no evidence that the ‘Bhali’ (M.O.I) was produced for inspection of either P.W.2 or P.W.8 to give their opinion if the fatal injury on the head was possible by that ‘Bhali’. Even M.O.I was not sent for chemical analysis and serological test. So far as eye witnesses are concerned, they discrepantly described about the assault on the deceased by the accused persons including the present respondent. For example, P.W.1 stated that all the accused persons assaulted the deceased and when he fell down, the accused-responent dealt blow by the ‘Bhali’. On the other hand, in the FIR he stated that accused-responent dealt a stab blow. Similarly, P.W.3 stated that after the deceased fell down, the accused persons dealt blows on the head and other parts of the body of the deceased by means of lathi and then the accused-responent also dealt blows with that ‘Bhali’. It thus reveals that there was no clear cut evidence to attribute the aforesaid fatal injury on the head of the

deceased to the accused-respondent alone. Under such circumstance, when the trial court has granted the benefit of doubt to the other accused persons and that is not challenged by the State, we do not feel it proper to interfere with the factual finding of the trial court when it granted the benefit of doubt to the accused-respondent.

6. Thus, the Government Appeal bears no merit and is accordingly dismissed.

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P.K.Tripathy,J.

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Pradip Mohanty, J.

Orissa High Court, Cuttack
 October 27, 2006 / **Routray**